

AMENDED IN ASSEMBLY APRIL 7, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2975

Introduced by Assembly Member Keene

February 22, 2008

An act to ~~amend Section 606.5 of~~ *add Section 612 to* the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2975, as amended, Keene. Unemployment insurance: ~~temporary employers.~~ *professional employer organizations.*

Existing law requires that the determination of the employer-employee relationship be made pursuant to common-law principles, with specified exceptions. Existing law provides that when an individual or entity contracts to supply an employee to perform services for a customer or client and is a leasing employer or a temporary services employer, as defined, the individual or entity is the employer of the employee who performs the services.

~~This bill, on and after January 1, 2009, would require a leasing employer or temporary services employer, when reporting unemployment insurance for workers employed to provide services to a customer or client, to identify itself as a temporary services employer or leasing employer. The bill would further require the Employment Development Department to develop and issue a form that the leasing employer or temporary services employer may use to provide that identification.~~

This bill would, for purposes of all employment laws of this state, provide that a professional services organization, as defined, that enters into a professional services agreement with a client shall be deemed to

be the employer of a worksite employee. This bill would require the Employment Development Department to administer the provisions of the bill, as specified. This bill would impose various requirements on professional services organizations and clients, and would also provide for fines and disciplinary actions.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 612 is added to the Unemployment
2 Insurance Code, to read:

3 612. (a) Notwithstanding any other law, for purposes of all
4 employment laws of this state, a PEO that enters into a professional
5 services agreement with a client shall be deemed to be the employer
6 of a worksite employee.

7 (b) For purposes of this section:

8 (1) "PEO" means a professional employer organization that
9 meets all of the requirements of this section.

10 (2) "Client" means a person or entity that meets all of the
11 requirements of this section.

12 (3) "Worksite employee" means any person who performs
13 services on a long-term basis rather than a temporary or seasonal
14 basis, for, or for the benefit of, a client at the facilities or other
15 worksite owned or otherwise controlled by the client.

16 (4) "Professional services agreement" means a written
17 agreement executed on or after January 1, 2009, between a PEO
18 and a client that contains all of the following terms, conditions,
19 and requirements:

20 (A) The PEO is responsible for the payment of the wages of the
21 worksite employee, including the responsibility to withhold and
22 remit all income, unemployment, and other taxes related to those
23 wages.

24 (B) The PEO is authorized to make payments or contributions
25 with respect to any employee benefits, including, but not limited
26 to, contributions to employee retirement plans.

27 (C) The PEO retains the authority to hire, discipline, and
28 terminate the worksite employee, except that the client retains the
29 authority to direct and control the worksite employee as is
30 necessary to conduct the client's business, to discharge the client's

1 *fiduciary obligations, or to comply with any licensure and other*
2 *legal requirements applicable to the client or worksite employee.*

3 *(D) The client has the sole responsibility for all of the following:*

4 *(i) The quality, adequacy, and safety of the goods or services*
5 *produced or sold pursuant to the client's business activities.*

6 *(ii) The direction, supervision, training, and work of the worksite*
7 *employee with respect to the business activities of the client, and*
8 *the acts, errors, or omissions of the employee with respect to those*
9 *activities.*

10 *(iii) The direction and control of any professional or licensure*
11 *requirements imposed on the worksite employee, the client, and*
12 *the client's business activities.*

13 *(c) (1) No person or entity shall provide, advertise, or otherwise*
14 *hold itself out as providing professional employer services in the*
15 *State of California, unless that person or entity is registered with*
16 *the department.*

17 *(2) Each applicant for registration with the department shall*
18 *provide all of the following information:*

19 *(A) The name or names under which the PEO conducts business.*
20 *A PEO includes any individual, partnership, corporation, limited*
21 *liability company, association, or any other person or entity*
22 *engaged in the business of providing professional employer*
23 *services.*

24 *(B) The address of the principal place of business of the PEO*
25 *and the address of each office it maintains in this state.*

26 *(C) The PEO's taxpayer or employer identification number.*

27 *(D) The PEO's department account numbers.*

28 *(E) A list, by jurisdiction, of each name under which the PEO*
29 *has operated in the preceding five years, including any alternative*
30 *names, names of predecessors and, if known, successor business*
31 *entities.*

32 *(F) A statement of ownership, that includes the name and*
33 *evidence of the business experience of any person that, individually*
34 *or acting in concert with one or more other persons, owns or*
35 *controls, directly or indirectly, 25 percent or more of the equity*
36 *interests of the PEO.*

37 *(G) A statement of management that includes the name and*
38 *evidence of the business experience of any person who serves as*
39 *president, chief executive officer, or otherwise has the authority*
40 *to act as senior executive officer of the PEO.*

1 (d) Each applicant for registration shall pay an annual
2 registration fee of two thousand dollars (\$2,000) to be dedicated
3 solely to the enforcement of this section. The registration fee shall
4 be refunded to any applicant denied registration.

5 (e) The director shall have the ability to deny an application
6 for registration if any requirement under the section is not satisfied.
7 The director, upon good cause, may impose, in his or her
8 discretion, the terms of penalties and the revocation of a
9 registration.

10 (f) Each registered PEO shall notify the department whether
11 the PEO will report payroll information for all its client companies
12 on either (1) one department unemployment insurance account
13 number or, (2) on multiple department unemployment insurance
14 account numbers in compliance with Section 135.2.

15 (g) Any registered PEO that reports payroll for client companies
16 on multiple department unemployment insurance account numbers
17 in compliance with Section 135.2 shall do both of the following:

18 (1) Notify the department within 30 days of any transfer of
19 employees between department unemployment insurance accounts.
20 Notice shall include the department unemployment insurance
21 account numbers involved in the transfer, the client name and the
22 worksite employees that have been transferred between the
23 accounts on forms prescribed by the department for purposes of
24 transferring experience.

25 (2) Certify quarterly to the department that no employees have
26 been transferred between department accounts unless experience
27 has also been transferred and the department has been notified of
28 the transfer.

29 (h) Each registered PEO shall report and remit all taxes due
30 to the department no later than every 30 days.

31 (i) No more than 30 days after the inception of a new service
32 contract with a client, a registered PEO shall notify and register
33 with the department the name and employer identification number
34 (EIN) of the client, the social security numbers for each worksite
35 employee entering the PEO relationship from that client, and a
36 list of any active or inactive department unemployment insurance
37 account numbers associated with that client with an explanation
38 of any client account that will remain open. Upon notification, the
39 department shall transfer the client's existing reserve balance to
40 the registered PEO's department account numbers.

1 (j) No more than 30 days after the termination of a service
2 contract with a client, a registered PEO shall notify the department
3 and provide the name and EIN of their former client and the
4 separation date of the service contract. Upon notification, the
5 department shall transfer a reserve balance to the client's
6 department unemployment insurance account number equivalent
7 to the amount the client initially transferred to the registered PEO
8 upon the inception of the professional services agreement.

9 (k) Upon the effective date of the act adding this section, a
10 registered PEO shall notify the department of all existing clients
11 and register with the department the name and EIN of the client,
12 the social security numbers for each worksite employee entering
13 the PED relationship from that client, and a list of any active or
14 inactive department unemployment insurance account numbers
15 associated with that client with an explanation of any client
16 accounts that will remain open.

17 (l) Except as provided in subdivision (m), a registered PEO
18 shall post and maintain a surety bond issued by a corporate surety
19 entity authorized to do business in California in an amount
20 equivalent to one-twelfth of unemployment insurance and disability
21 insurance tax contributions or payments in lieu of contributions
22 for which the PEO was liable in the last calendar year in which
23 it accrued contributions or payments in lieu of contributions to
24 ensure prompt payment of contributions.

25 (m) In lieu of a surety bond, the PEO may do any of the
26 following:

27 (1) Deposit in a depository, securities with a market value
28 equivalent to the amount required for a surety bond. The securities
29 deposited shall include authorization to the department to sell any
30 securities in an amount sufficient to pay delinquent contributions.

31 (2) Provide the department with an irrevocable letter of credit
32 issued by a state or federally chartered financial institution in an
33 amount equal to the amount required for a surety bond.

34 (3) Obtain a certificate of deposit issued by a state or federally
35 chartered financial institution, in an amount required for a surety
36 bond as described in this paragraph. The certificate of deposit
37 shall be pledged to the department.

38 (4) Provide sufficient evidence that it has been accredited by a
39 bonded, independent, and qualified assurance organization

1 approved by the director that provides satisfactory assurance of
2 compliance acceptable to the department.

3 (n) A registered PEO shall provide the department with a
4 monthly attestation, from a certified public accountant licensed
5 to practice in the jurisdiction in which the accountant is located,
6 attesting that all payroll has been reported and that all personal
7 income taxes due to the department have been reported and
8 remitted.

9 (o) The department may, upon failure of a registered PEO to
10 submit a monthly attestation in a timely fashion or upon evidence
11 that a registered PEO has not reported and remitted all personal
12 income tax due to the department, require that a registered PEO
13 post and maintain a surety bond issued by a corporate surety entity
14 authorized to do business in California, moneys, an irrevocable
15 letter of credit, or certificate of deposit in an amount equivalent
16 to one-twelfth of the personal income tax payments for which the
17 PEO was liable in the last calendar year.

18 (p) A registered PEO shall submit an audited financial statement
19 setting forth the financial condition of the PEO. At the time of
20 application for a new registration, the applicant shall submit the
21 most recent audit of the applicant, which may not be older than
22 13 months. Thereafter, a PEO shall file on an annual basis, within
23 180 days after the end of the PEO's fiscal year, a succeeding audit.
24 The financial statement shall be prepared in accordance with
25 generally accepted accounting principles (GAAP) and be audited
26 by an independent certified public accountant licensed to practice
27 in the jurisdiction in which the accountant is located, and shall be
28 without qualification as to the going concern status of the PEO.
29 The audit shall be accompanied by an attestation of the chief
30 executive officer that all wages, taxes, unemployment insurance,
31 workers' compensation premiums, and employee benefits have
32 been paid by the PEO.

33 (q) Disciplinary action may be taken by the department for any
34 violation of this section or for any of the following:

35 (1) The conviction of a PEO or a controlling person of a PEO
36 of a crime that relates to the operation of a PEO or relates to fraud
37 or deceit or the ability of the registrant or a controlling person of
38 a registrant to operate a PEO.

39 (2) Knowingly making a material misrepresentation to the
40 department, or other governmental agency.

1 (3) A willful violation of this section or any order or regulation
2 issued by the department under this section.

3 (r) Upon finding, after notice and opportunity for hearing, that
4 a PEO or a controlling person of a PEO has violated one or more
5 provisions of this section, the director may do the following:

6 (1) Deny an application for a registration.

7 (2) Revoke or refuse to renew a registration.

8 (3) The director shall promulgate all rules necessary for the
9 administration of this section.

10 SECTION 1. ~~Section 606.5 of the Unemployment Insurance~~
11 Code is amended to read:

12 ~~606.5. (a) Whether an individual or entity is the employer of~~
13 ~~specific employees shall be determined under common-law rules~~
14 ~~applicable in determining the employer-employee relationship,~~
15 ~~except as provided in subdivisions (b) and (c).~~

16 ~~(b) (1) As used in this section, a "temporary services employer"~~
17 ~~and a "leasing employer" is an employing unit that contracts with~~
18 ~~clients or customers to supply workers to perform services for the~~
19 ~~client or customer and performs all of the following functions:~~

20 ~~(A) Negotiates with clients or customers for such matters as~~
21 ~~time, place, type of work, working conditions, quality, and price~~
22 ~~of the services.~~

23 ~~(B) Determines assignments or reassignments of workers, even~~
24 ~~though workers retain the right to refuse specific assignments.~~

25 ~~(C) Retains the authority to assign or reassign a worker to other~~
26 ~~clients or customers when a worker is determined unacceptable~~
27 ~~by a specific client or customer.~~

28 ~~(D) Assigns or reassigns the worker to perform services for a~~
29 ~~client or customer.~~

30 ~~(E) Sets the rate of pay of the worker, whether or not through~~
31 ~~negotiation.~~

32 ~~(F) Pays the worker from its own account or accounts.~~

33 ~~(G) Retains the right to hire and terminate workers.~~

34 ~~(2) On and after January 1, 2009, when reporting unemployment~~
35 ~~insurance to the department for workers employed to provide~~
36 ~~services to a customer or client, a temporary services employer or~~
37 ~~a leasing employer shall identify itself as a temporary services~~
38 ~~employer or leasing employer. The department shall develop and~~
39 ~~issue a form that the temporary services employer or leasing~~
40 ~~employer may use to identify itself pursuant to this paragraph.~~

1 ~~(e) If an individual or entity contracts to supply an employee to~~
2 ~~perform services for a customer or client, and is a leasing employer~~
3 ~~or a temporary services employer, the individual or entity is the~~
4 ~~employer of the employee who performs the services. If an~~
5 ~~individual or entity contracts to supply an employee to perform~~
6 ~~services for a client or customer and is not a leasing employer or~~
7 ~~a temporary services employer, the client or customer is the~~
8 ~~employer of the employee who performs the services. An individual~~
9 ~~or entity that contracts to supply an employee to perform services~~
10 ~~for a customer or client and pays wages to the employee for the~~
11 ~~services, but is not a leasing employer or a temporary services~~
12 ~~employer, pays the wages as the agent of the employer.~~

13 ~~(d) In circumstances which are in essence the loan of an~~
14 ~~employee from one employer to another employer wherein~~
15 ~~direction and control of the manner and means of performing the~~
16 ~~services changes to the employer to whom the employee is loaned,~~
17 ~~the loaning employer shall continue to be the employer of the~~
18 ~~employee if the loaning employer continues to pay remuneration~~
19 ~~to the employee, whether or not reimbursed by the other employer.~~
20 ~~If the employer to whom the employee is loaned pays remuneration~~
21 ~~to the employee for the services performed, that employer shall~~
22 ~~be considered the employer for the purposes of any remuneration~~
23 ~~paid to the employee by the employer, regardless of whether the~~
24 ~~loaning employer also pays remuneration to the employee.~~